

Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.

ATTORNEY FOR APPELLANT:

CHRISTINA ROSE KLINEMAN
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

MATTHEW D. FISHER
Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

KINDRA PULLINS,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

)
)
)
)
)
)
)
)
)
)
)

No. 49A02-0609-CR-758

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Steven Rubick, Commissioner
Cause No. 49F09-0401-FD-559

April 13, 2007

MEMORANDUM DECISION – NOT FOR PUBLICATION

RILEY, Judge

STATEMENT OF THE CASE

Appellant-Defendant, Kindra D. Pullins (Pullins), appeals from the revocation of her probation imposed following her guilty plea to theft, a Class D felony, Ind. Code § 35-43-4-2.

We reverse and remand for clarification as to the grounds of the revocation.

ISSUE

Pullins raises one issue on appeal, which we restate as follows: Whether the trial court's order on probation violation was adequate to provide for appellate review.

FACTS AND PROCEDURAL HISTORY

During December 2003, while working at a K-mart in Indianapolis, Pullins used several customers' credit card information to purchase items for herself and also "free bagged" several items without making any attempt to pay for them. (Appellant's App. pp. 22-26). On January 2, 2004, Pullins was arrested. On January 8, 2004, the State filed an Information charging Pullins with theft, a Class D felony, I.C. § 35-43-4-2. On May 5, 2004, Pullins pled guilty and was sentenced to three years of incarceration with all but four days suspended to probation. As a condition of her probation, Pullins was required to pay various court fees, including restitution in the amount of \$2,805. Her probation also contained a community service work provision requiring her to complete 200 hours of community service if she is unemployed, 100 hours if she has one job and no hours if she has two jobs.

On October 27, 2004, the State filed a notice of probation violation due to Pullins' failure to make any payments. On November 16, 2004, the trial court found no

violation and continued Pullins' probation. On December 2, 2004, the trial court issued a judgment for unpaid probation fees of \$2,755 and a garnishment order. On October 3, 2005, the State filed a Notice of Probation Violation alleging that Pullins had failed to report as directed, failed to make regular payments and failed to perform community service work. On January 20, 2006, the trial court ordered the probation to be continued with the additional condition that Pullins either get a job within two weeks or start community service work. On March 13, 2006, the State filed a third Notice of Probation Violation alleging that Pullins (1) failed to obtain employment, (2) failed to make regular payments toward court debt, and (3) failed to perform community service work. On May 9, 2006, the trial court found Pullins in violation of her probation but stayed sanctions pending a determination of whether she was in full compliance by August 8, 2006. On August 8, 2006, the trial court determined that Pullins had violated her probation and ordered her to serve two years with the Department of Community Corrections. The trial court also entered civil judgment against Pullins for the remaining amount of unpaid probation fees.

Pullins now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

Pullins contends that the probation requirement of community service was unconstitutionally vague, denying her due process rights. On the other hand, the State contends the Order is inadequate for review. We agree. Here the State filed a third notice of probation violation, alleging (1) failure to obtain employment, (2) failure to

make regular payments toward the court debt, and (3) failure to serve community service work.

During the August 8, 2006 hearing, the trial court stated:

Ms. Pullins, you are not employed. You've done, at most, fifteen (15) hours of community service work and you have paid, at most, \$25.21... Ms. Pullins, this case has simply dragged on too long. It's gotten to the point where. . . It's gotten to the point where you're [sic] noncompliance, you are [in] serial noncompliance. It's border (inaudible) ridiculous. The underlying offense took place in December of 2003. You have been found in violation on two (2) previous occasions. The Court has attempted to give you every possible opportunity to bring yourself into compliance. On the occasion[s] that I have seen you, you've had a variety of excuses [f]or you[r] inability to comply, even [with] the most basic terms of probation. I note from the record that garnishment orders had [been] issued to former employers. And the garnishing orders have never taken effect because you changed jobs. The Court has given you an either/or situation, either be employed or do community service work, and you walk a fine line between the two (2) changing jobs often enough that you complain that you are not able to do your community service work. But not long enough that you can actually make payments on your monetary obligation. When you have planned to do community service work, as you previously advised the Court in April, when you planned that you had completed your community service work or you were performing you community service work, it's unclear which. You were doing those hours at the Emerson Avenue Baptist Church but those documents were never produced. Long and short, Ms. Pullins, every time I see you you have a different story and I don't see that you have made any substantial progress on your obligations other than the \$90 payment you've made. You surprised me a little bit when I asked you if you were frightened, because you've got three (3) years in prison staring you in your face. . . Ms. Pullins, I found you in violation on June 13th, I stayed sanctions until today. I frankly have not seen any progress. Finally, I'm going to revoke your probation on cause 04000559.

Transcript pp. 27-28, 30-31 and 31-32.

Based upon a review of the trial court transcript, it is unclear which of the three conditions of probation (1) failure to obtain employment (2) failure to make regular

payments toward the court debt or (3) failure to serve community service work, the judge considered to have been violated in revoking Pullins' probation.

Furthermore, one of the alleged violations of Pullins' probation was her failure to make regular payments towards her court debt. Revocation of probation for failure to make restitution requires the trial court to "inquire into the reasons for the failure to make the required payments." *Barnes v. State*, 676 N.E.2d 764, 765 (Ind. Ct. App. 1997). If, upon this inquiry, "the court finds that a probationer has willfully refused to make restitution or has failed to make sufficient bona fide efforts to pay, his probation can be revoked." *Id.* The record reveals that the trial court made a determination into whether Pullins could have paid restitution at the time it revoked her probation. The trial court also indicates that attempts to implement garnishment orders had been unsuccessful due to Pullins continually changing work status. However, there was no indication that the termination of employment, whether voluntary or not, was done to willfully avoid paying restitution. On the day of her probation revocation hearing, Pullins made a \$90 payment and still owed approximately \$2,500 on her monetary judgment. Due to the wording of the order, it is unclear whether her lack of consistent payments was the reason her probation was revoked.

It has been held that "proof of a single violation of the conditions of probation is sufficient to support the decision to revoke probation." *Bussberg v. State*, 827 N.E.2d 37, 44 (Ind. Ct. App. 2005). If the trial court decided to revoke her probation on grounds other than those contested by Pullins, we do not need to review her constitutional

argument. We are remanding this case to the trial court to clarify the reason or reasons for revocation of probation.

CONCLUSION

Based on the foregoing, we find that the trial court has not adequately described in its probation revocation order its basis for the revocation. We remand this case for a clarification of the probation conditions determined to be violated in revoking probation.

Reversed and Remanded.

KIRSCH, J., and FRIEDLANDER, J., concur.